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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN VALENCIA CASTRO,

Defendant and Appellant.

D070716

(Super. Ct. No. SCD266777)

APPEAL from an order of the Superior Court of San Diego County, Daniel F. Link, Judge. Affirmed.

Anita P. Jog, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Seth M. Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

Juan Valencia Castro pled guilty to taking a vehicle without consent (Veh. Code, § 10851, subd. (a)). Pursuant to the plea agreement, Castro was granted probation on various terms and conditions. On appeal, Castro challenges the probation condition requiring that he permit the warrantless search of any electronic device if required by a law enforcement officer. He asserts the condition is unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) and is unconstitutionally overbroad. We reject these contentions and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Castro was arrested after being pulled over for driving a car that had been reported stolen minutes before. He was charged with taking a vehicle without consent (Veh. Code, § 10851, subd. (a)) and ultimately pled guilty. When Castro was questioned by the probation department before sentencing, he told the interviewing officer that he used methamphetamine and marijuana regularly, and was under the influence of the drugs when he committed the crime. He also reported he had completed a two-year drug treatment program in 2009, but had since relapsed into regular use.

The trial court sentenced Castro to 120 days in custody and ordered him to serve three years of formal probation. It imposed various probation conditions, including conditions restricting drug and alcohol use and requiring Castro to participate in substance abuse treatment. The court also imposed a probation condition requiring Castro to "[s]ubmit person, vehicle, residence, property, personal effects, computers, and recordable media to search at any time without a warrant, and with or without reasonable cause, when required by [a probation] or law enforcement officer." At the hearing, citing

Lent, Castro's counsel objected to the condition to the extent it was applied to electronic devices because it was not related to the crime Castro committed. The court denied the objection, explaining that the condition was appropriate because thieves often take pictures of stolen goods, and store the photographs on cell phones and computers.

DISCUSSION

Castro asserts the trial court abused its discretion by imposing the electronic search condition because there was no evidence he "was involved with the photographing, advertising, or selling of stolen vehicles." He also contends the condition is unconstitutionally overbroad and not narrowly tailored to the government's rehabilitative interests.

I

Under *Lent*, "[w]e review conditions of probation for abuse of discretion. [Citations.] Generally, '[a] condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality" [Citation.].' [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*), quoting *Lent*, *supra*, 15 Cal.3d at p. 486.) In addition, " ' "a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason." ' " (*People v. Zapien* (1993) 4 Cal.4th 929, 976.)

The parties agree the first two prongs of the *Lent* test are satisfied in this case: (1) the electronic search condition has no relationship to Castro's crime; and (2) it relates to conduct that is not itself criminal. The dispositive issue is whether the electronic search condition requires or forbids conduct that is reasonably related to future criminality. The issue is currently pending before the California Supreme Court. (See *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923; *In re Alejandro R.* (2015) 243 Cal.App.4th 556, review granted Mar. 9, 2016, S232240; *In re Mark C.* (2016) 244 Cal.App.4th 520, review granted Apr. 13, 2016, S232849; *In re A.S.* (2016) 245 Cal.App.4th 758, review granted May 25, 2016, S233932; *In re J.E.* (2016) 1 Cal.App.5th 795, 800-802, review granted Oct. 12, 2016, S236628; *People v. Nachbar* (2016) 3 Cal.App.5th 1122, 1130, review granted Dec. 14, 2016, S238210; *In re George F.* (2016) 248 Cal.App.4th 734, 740-741, review granted Sept. 14, 2016, S236397.)

Pending guidance, the Courts of Appeal have divided on the reasonableness of electronic search conditions like the one at issue here. The cases upholding electronic search conditions have looked to the Supreme Court's opinion in *Olguin*, which considered a probation condition requiring the probationer to notify his probation officer of any pets in his residence and give 24 hours' notice prior to any changes. (*Olguin, supra*, 45 Cal.4th at p. 380.) In *Olguin*, the court explained that "conditions of probation 'are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. [Citation.] These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed.' " (*Ibid.*) As a general rule, "[a] condition of probation that enables

a probation officer to supervise his or her charges effectively is, therefore, 'reasonably related to future criminality.' " (*Id.* at pp. 380-381.)

The Supreme Court upheld the probation condition concerning the notification of pets as reasonably related to "future criminality because it serves to inform and protect a probation officer charged with supervising a probationer's compliance with specific conditions of probation." (*Olguin, supra*, 45 Cal.4th at p. 381.) The court reasoned that the probation condition ensured the probation officer's safety when making unannounced visits to the probationer's residence. (*Id.* at pp. 381-382.) The court concluded, "Reporting the presence of pets to a probation officer is a simple task, imposes no undue hardship or burden, and is a requirement that clearly falls within the bounds of reason." (*Id.* at p. 382.)

In *In re P.O.* (2016) 246 Cal.App.4th 288 (*P.O.*), the First District held that an electronic search condition like the one imposed on Castro was reasonably related to future criminality in the context of a juvenile offender because it enabled "the effective supervision of [the juvenile ward's] compliance with other probation conditions. Specifically, the condition enables peace officers to review [the ward's] electronic activity for indications that [the ward] has drugs or is otherwise engaged in activity in violation of his probation." (*Id.* at p. 295; see also *In re J.E., supra*, 1 Cal.App.5th at pp. 800-802, review granted Oct. 12, 2016, S236628 [concluding electronics search condition was reasonable to monitor probationer with drug problems and gang ties]; *People v. Nachbar, supra*, 3 Cal.App.5th at p. 1130, review granted Dec. 14, 2016, S238210 [upholding electronics search condition where probation officer stated the probationer should be

intensively monitored]; *In re George F.*, *supra*, 248 Cal.App.4th at p. 741, review granted Sept. 14, 2016, S236397 [upholding search condition on the grounds it is "reasonably related to a probationer's supervision" and therefore, under *Olguin*, "reasonably related to the probationer's future criminality. . . ."])

In *In re J.B.* (2015) 242 Cal.App.4th 749, a different division of the First District reached the opposite conclusion, holding "[t]he fact that a search condition would facilitate general oversight of the individual's activities is insufficient to justify an open-ended search condition permitting review of all information contained or accessible on the minor's smart phone or other electronic devices." (*Id.* at p. 758.) The *In re J.B.* court, like another similar case that struck an electronic search condition, *In re Erica R.* (2015) 240 Cal.App.4th 907, relied in part on the distinction between adult probationers and juvenile wards. *In re J. B.* noted " ' ' '[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the minor's reformation and rehabilitation.' " [Citation.] A juvenile "cannot refuse probation [citations] and therefore is in no position to refuse a particular condition of probation." ' ' " (*In re J.B.*, at p. 756.) *In re J.B.* and *In re Erica R.* both concluded the conditions were not reasonably related to the delinquents' future criminality and struck the conditions under *Lent*. (*In re J.B.*, at pp. 756-758; *In re Erica R.*, at p. 913; see also *People v. Bryant* (2017) 10 Cal.App.5th 396, 401-402, as modified Apr. 17, 2017.)

We conclude that the reasoning of *Olguin*, in light of Castro's admitted drug abuse, supports the imposition of the electronic search condition as a reasonable supervision measure. The condition is sufficiently related to Castro's future criminality under *Lent's*

third prong. Castro has a history of drug use and was under the influence of methamphetamine and marijuana when he committed the offense. Receiving substance abuse treatment is another condition of his probation. Permitting probation officers to search his electronic devices is reasonably related to their effective supervision since such devices could easily reveal evidence of drug purchase and use that would violate other probation terms and jeopardize the community. (See *P.O.*, *supra*, 246 Cal.App.4th at p. 295 ["the condition enables peace officers to review P.O.'s electronic activity for indications that [he] has drugs or is otherwise engaged in activity in violation of his probation"].)

II

Castro also asserts the condition is not narrowly tailored to its purpose and, therefore, should be struck as unconstitutionally broad or modified. We disagree. " 'A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as constitutionally overbroad.' [Citation.] 'The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.) We review "constitutional challenges to probation conditions de novo." (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723.)

Citing *P.O. and Appleton*, Castro contends the electronic search condition is a serious "intrusion on [his] privacy." He argues that most cases on the issue "have found computer search conditions to be overbroad" for this reason. Certainly the privacy concerns that Castro points to, as recognized by the United States Supreme Court in *Riley v. California* (2014) __ U.S. __ [134 S.Ct. 2473] are not insignificant. But the competing considerations they must be balanced against yield a different result in the specific context of a probation condition. Unlike the defendant in *Riley*, who had not been convicted of a crime at the time his cell phone was searched and was still protected by the presumption of innocence, a probationer does not " 'enjoy "the absolute liberty to which every citizen is entitled." ' " (*United States v. Knights* (2001) 534 U.S. 112, 119.) Indeed, "[j]ust as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens." (*Ibid.*)

Riley itself made clear that although cell phone data is subject to Fourth Amendment protection, it is not "immune from search." (*Riley v. California, supra*, 134 S.Ct. at p. 2493.) Moreover, although electronic devices store a wealth of personal information, they are not alone in this character. A home also contains large amounts of personal information, yet courts have historically granted probation officers significant authority to search a probationer's residence. (See *People v. Balestra* (1999) 76 Cal.App.4th 57, 62, 65-68 [upholding probationer's broad home search condition]; *In re Binh L.* (1992) 5 Cal.App.4th 194, 198, 203-205 [upholding search conducted pursuant to juvenile probationer's broad search condition]; *People v. Medina* (2007) 158 Cal.App.4th

1571, 1575-1580 [upholding search conducted pursuant to probationer's broad home search condition]; *People v. Reyes* (1998) 19 Cal.4th 743, 746, 754 [upholding search conducted pursuant to parole condition requiring defendant to submit his residence and property under his control to search by law enforcement].) In terms of the degree of intrusion, searching a cell phone for evidence of drug activity is really no different than searching a dresser drawer in the defendant's bedroom or a diary found on the nightstand.

Although Castro's privacy rights are implicated by the electronic search condition, by choosing probation in lieu of additional punishment his expectation of privacy is diminished. With this principle in mind, the search condition here is appropriately tailored to the state's legitimate supervisory interest. As discussed, the condition allows probation officers to supervise Castro's compliance with the other unchallenged drug and alcohol probation terms imposed by the court. Given Castro's limited expectation of privacy, we conclude that his admitted substance abuse and its connection to his criminal behavior justifies the imposition of the electronic search condition in this case.

DISPOSITION

The order is affirmed.

DATO, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.